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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

FEB 15 2005

FEB 16 2005

DOCKETED BY	<i>NR</i>
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AZ Corporation Commission  
Director Of Utilities

IN THE MATTER OF THE APPLICATION OF  
THE J. RICHARD COMPANY DBA LIVE WIRE  
PHONE COMPANY FOR A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO PROVIDE  
RESOLD LONG DISTANCE, RESOLD LOCAL  
EXCHANGE AND FACILITIES-BASED LOCAL  
EXCHANGE SERVICES IN THE STATE OF  
ARIZONA AND PETITION FOR COMPETITIVE  
CLASSIFICATION OF PROPOSED SERVICES.

DOCKET NO. T-04257A-04-0335

DECISION NO. 67588

OPINION AND ORDER

DATE OF HEARING: January 13, 2005  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Lyn Farmer  
APPEARANCES: Tom Campbell, LEWIS AND ROCA, on behalf of The  
J. Richard Company dba Live Wire Phone Company;  
and  
Maureen Scott, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the  
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On May 3, 2004, The J. Richard Company, LLC ("JRC") filed with the Commission an  
application for a Certificate of Convenience and Necessity ("Certificate") to provide resold long  
distance and resold local exchange services within the State of Arizona. JRC petitioned the  
Commission for a determination that its proposed services should be classified as competitive.

2. On June 9, 2004, JRC filed an amendment to the application changing JRC's name to  
The J. Richard Company, dba Live Wire Phone Company ("Live Wire" or "Applicant") and

1 additionally requesting authority to provide facilities-based local exchange telecommunications  
2 within the State of Arizona.

3 3. On November 26, 2004, the Commission's Utilities Division Staff ("Staff") filed its  
4 Staff Report, which recommended approval of the Application and included a number of additional  
5 recommendations.

6 4. On December 1, 2004, a Procedural Order was issued setting this matter for hearing  
7 on January 13, 2005 and setting various procedural deadlines.

8 5. On December 21, 2004, Applicant docketed an Affidavit of Publication that complies  
9 with Commission rules.

10 6. On January 13, 2005, a full public hearing in this matter was held as scheduled. Live  
11 Wire appeared and was represented by counsel. Staff appeared and was represented by counsel. The  
12 hearing was conducted before a duly authorized Administrative Law Judge. Evidence was presented  
13 and testimony was taken.

14 7. At the conclusion of the hearing, the Administrative Law Judge took the matter under  
15 advisement.

16 8. The J. Richard Company, dba Live Wire Phone Company is organized under the laws  
17 of the State of Arizona and is authorized to do business in Arizona.

18 9. Applicant has the technical capability to provide the services that are proposed in its  
19 Application.

20 10. Currently there are several incumbent providers of local exchange and interexchange  
21 services in the service territory requested by Applicant, and numerous other entities have been  
22 authorized to provide competitive local and interexchange services in all or portions of that territory.

23 11. It is appropriate to classify all of Applicant's authorized services as competitive.

24 12. According to Staff, Live Wire submitted audited financial statements for the four  
25 month period ending April 29, 2004. These financial statements list assets of \$23,500. Applicant  
26 indicated that because it has not yet begun offering service, there is no net income/loss.

27 13. Staff recommended that Live Wire's Application for a Certificate to provide  
28 competitive resold long distance, resold local exchange and facilities-based local exchange

telecommunications services be granted subject to the following conditions:

- (a) that, unless it provides services solely through the use of its own facilities, Live Wire be ordered to procure an Interconnection Agreement, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, that must remain in effect until further order of the Commission, before being allowed to offer local exchange service. If Applicant provides services solely through the use of its own facilities, no other information shall be required once the Applicant informs the Commission by docketing a letter within the timeframes set forth above;
- (b) that Live Wire be ordered to file with the Commission, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, its plan to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases and to maintain the plan in effect until further order of the Commission;
- (c) that Live Wire be ordered to pursue permanent number portability arrangements with other LECs pursuant to Commission rules, federal laws and federal rules;
- (d) that Live Wire be ordered to abide by and participate in the AUSF mechanism instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-00000E-95-0498);
- (e) that Live Wire be ordered to abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- (f) that in areas where it is the sole provider of local exchange service facilities, Live Wire be ordered to provide customers with access to alternative providers of service pursuant to the provisions of Commission rules, federal laws and federal rules;
- (g) that Live Wire be ordered to abide by all the Commission decisions and policies regarding CLASS services;
- (h) that Live Wire be ordered to provide 2-PIC equal access;
- (i) that Live Wire be required to notify the Commission immediately upon changes to its name, address or telephone number;
- (j) that Live Wire be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
- (k) that Live Wire be ordered to maintain its accounts and records as required by the Commission;
- (l) that Live Wire be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (m) that Live Wire be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;

- (n) that Live Wire be ordered to cooperate with Commission investigations including, but not limited to, customer complaints;
- (o) that Live Wire be ordered to participate in and contribute to a universal service fund, as required by the Commission; and
- (p) that Live Wire be subject to the Commission's rules governing interconnection and unbundling and the 1996 Telecommunications Act and the rules promulgated thereunder to the extent that they apply to CLECs.

14. Although Staff included a discussion of 911 service in its Staff Report, its listed recommendations did not include 911 service. Staff usually includes in its recommendations a provision that requires the Applicant to certify that all issues associated with the provision of 911 service have been resolved. Accordingly, we will require: that Live Wire certify, through the 911 service provider in the area in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers within 365 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, which certification must remain in effect until further order of the Commission.

15. Staff additionally recommended that Live Wire's application for a CC&N to provide intrastate telecommunications services should be granted subject to the following conditions:

- (a) Live Wire be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision;
- (b) If the above timeframe is not met, that Live Wire's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted;
- (c) if Live Wire desires to discontinue service, it should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107; and
- (d) Live Wire should be required to notify each of its customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, and any failure to do so should result in forfeiture of the Applicant's performance bond.

1           16.   Based upon Live Wire's indication that it collects advances, deposits, and/or  
2 prepayments from its customers, Staff recommended:

- 3           (a)   that Live Wire should be ordered to procure a performance bond equal to  
4               \$135,000. The minimum bond amount of \$135,000 should be increased if at  
5               any time it would be insufficient to cover prepayments or deposits collected  
6               from Live Wire's customers. The bond amount should be increased in  
7               increments of \$67,500 whenever the total amount of the advances, deposits and  
8               prepayments is within \$13,500 of the bond amount;  
9           (b)   that Live Wire should docket proof of the performance bond within 365 days  
10           of the effective date of this Order or 30 days prior to the provision of service,  
11           whichever comes first, and must remain in effect until further Order of the  
12           Commission;  
13           (c)   if at some time in the future, Live Wire does not collect from its resold long  
14           distance customers an advance, prepayment, or deposit, that Live Wire should  
15           be allowed to file with the Commission a request for cancellation of its  
16           established performance bond for the resold long distance portion of the bond  
17           only. Such request must reference the decision in this docket and must explain  
18           the Applicant's plans for canceling that portion of the bond and Staff will make  
19           a recommendation to the Commission for a decision; and  
20           (d)   If the above timeframe is not met, that Live Wire's CC&N should become null  
21           and void without further Order of the Commission and no extensions for  
22           compliance should be granted.

23           17.   In its Staff Report, Staff stated that based on information obtained from the Applicant,  
24 it has determined that Live Wire's fair value rate base is \$5,000, and is too small to be useful in a fair  
25 value analysis.

26           18.   Staff further stated that in general, rates for competitive services are not set according  
27 to rate of return regulation. Staff reviewed the rates to be charged by the company and believes that  
28 they are just and reasonable as they are comparable to other competitive local carriers, local  
incumbent carriers, and major long distance carriers. Therefore, while Staff considered the fair value  
rate base information submitted by Live Wire, it recommends that the fair value rate base information  
provided should not be given substantial weight in this analysis.

          19.   At the hearing, Live Wire's executive vice president, James Beaver, testified on the  
company's behalf. Mr. Beaver testified that neither Live Wire nor any of its employees or owners has  
or has had any association with a previous certificate holder with a similar name and who was the

1 respondent in a complaint filed by Staff.<sup>1</sup> Mr. Beaver also testified about the company's business  
2 plan. The company plans to target prepaid home phone service in lower socioeconomic markets.  
3 Agents will be established in local convenience, check cashing, and thrift types of stores, and  
4 customers' accounts and payments will be handled by the agents. Mr. Beaver testified that the  
5 company will comply with all the Commissions' rules, including service quality, disconnection, and  
6 slamming and cramming. Staff testified that there is nothing in the company's business plan that  
7 would pose a compliance problem with Commission rules, and that Staff believes that the Applicant  
8 can abide by the Commission's rules.

9 20. Live Wire agreed to file an amended agreement with the Commission which would  
10 provide that Live Wire would file all amendments to its interconnection agreement with Qwest, with  
11 the Commission for approval. Further, Live Wire agreed to file its master services agreement with  
12 Qwest with the Commission for approval, if the Commission determines the master service  
13 agreement is an interconnection agreement requiring Commission approval.<sup>2</sup>

14 21. At the hearing, Live Wire requested that the Staff recommendation contained in  
15 Finding of Fact 17(b) be modified to allow Live Wire to docket proof of the performance bond 10  
16 days prior to the provision of service, instead of 30 days, as Live Wire wishes to begin providing  
17 service as soon as possible. Staff had no objections to that request.

18 22. Staff's recommendations, as modified at hearing and herein, are reasonable.

19 23. Live Wire's fair value rate base is determined to be \$5,000 for purposes of this  
20 proceeding.

### 21 CONCLUSIONS OF LAW

22 1. Applicant is a public service corporation within the meaning of Article XV of the  
23 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

24 2. The Commission has jurisdiction over Applicant and the subject matter of the  
25 Application.

26 <sup>1</sup> LiveWireNet of Arizona, See Decision No. 66984 (May 11, 2004); "We have no association with them. It was by  
27 accident, I guess you would say, that we picked an infamous name. Our families got together and by democratic process  
came up with the name Live Wire, and once we had filed, we soon found out that it was infamous." Tr. p. 24.

28 <sup>2</sup> On January 26, 2005, Applicant filed an Application for Approval of the QPP Master Service Agreement, Docket No. T-  
04257-05-0048 et al.

3. Notice of the Application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its Application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive resold and facilities-based local exchange and interexchange telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. Applicant's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

## ORDER

IT IS THEREFORE ORDERED that the Application of The J. Richard Company dba Live Wire Phone Company for a Certificate of Convenience and Necessity for authority to provide resold long distance, resold local exchange and facilities-based local exchange telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon The J. Richard Company dba Live Wire Phone Company's timely compliance with the following two Ordering Paragraphs.

IT IS FURTHER ORDERED that The J. Richard Company dba Live Wire Phone Company shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that The J. Richard Company dba Live Wire Phone Company

1 shall procure and docket proof of a performance bond equal to \$135,000 the earlier of 365 days from  
2 the effective date of this Order or 10 days prior to the commencement of service.

3 IT IS FURTHER ORDERED that if The J. Richard Company dba Live Wire Phone Company  
4 fails to meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of  
5 Convenience and Necessity conditionally granted herein shall become null and void without further  
6 Order of the Commission.

7 IT IS FURTHER ORDERED that The J. Richard Company dba Live Wire Phone Company  
8 shall comply with all of the Staff recommendations set forth in Findings of Fact Nos. 13, 15, 16, and  
9 with Findings of Fact Nos. 14 and 20.

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IT IS FURTHER ORDERED that if The J. Richard Company dba Live Wire Phone Company fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, The J. Richard Company dba Live Wire Phone Company's performance bond shall be forfeited.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 15<sup>th</sup> day of Feb., 2005.

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

LF:mlj

1 SERVICE LIST FOR:

THE J. RICHARD COMPANY DBA LIVE WIRE  
PHONE COMPANY

2  
3 DOCKET NO.:

T-04257A-04-0335

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